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MAY 24 2004

In re Application of:

Doris Kuhlmann-Wilsdorf
Serial No.: 09/556,829
Filed: April 21, 2000
Attorney Docket No.: 10582-0002-20

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DECISION ACCEPTING
PAPERS

This is a response to the communication filed, via facsimile transmission, on March 18, 2003, and supplemented August 14, 2003. The communication has been treated as a petition to accept a copy of a response, in place of the apparently lost original response, as timely. This is also a response to the request for withdrawal of the Notice of Appeal, and petition for refund of the three (3) month extension of time filed December 30, 2002.

The petition is to accept the copy of the response is granted.
The request to withdraw the Notice of Appeal is granted.
The petition to refund the extension of time fee is granted.

The final Office action was mailed on June 05, 2002. No Notice of Abandonment has been mailed.

The requester asserts that on December 04, 2002, a response to the final Office action was filed. The response included a Request for Continued Examination (RCE) and submission under 37 C.F.R. § 1.114. To support this assertion, the requester has provided a copy of the response which includes a proper Certificate of Mailing under 37 C.F.R. § 1.8, and a statement from attorney, Kimberly O. Snead, that attests on a personal knowledge basis, that the above identified response was mailed to the PTO on December 04, 2002, and a return post card bearing a date stamp of receipt of December 10, 2002.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, 37 C.F.R. § 1.8(b) provides for accepting a correspondence as being timely filed if it was mailed or transmitted in accordance with 37 C.F.R. § 1.8(a). A further review reveals that the fee for the RCE was charged on December 11, 2002.

STATUTE, REGULATIONS AND PRACTICE

37 C.F.R. § 1.26 states in part that:

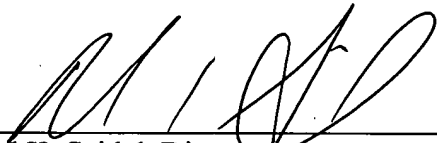
(a) Money paid by actual mistake or in excess will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of twenty - five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amount; amounts over twenty - five dollars may be returned by check or, if requested, by credit to a deposit account.

OPINION

Because the RCE filed on December 04, 2002 was a proper response to the final Office action, the filing of the Notice of Appeal and the request for a three (3) month extension of time on December 05, 2002 was unnecessary to prevent the application from becoming abandoned by operation of law. Thus, the extension of time fee and the Notice of Appeal fee were paid by mistake or in excess. These fees will be refunded. The request for withdrawal of the Notice of Appeal and the petition for refund of the extension of time fee is hereby granted.

The application file is being forwarded to the Technology Center 2800 support staff for processing the RCE and entry of the submission and refund of the Notice of Appeal fee and the extension of time fee. From there, the application will be forwarded to the examiner for continued examination.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.



Richard K. Seidel, Director
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